

Overall Framework of Florida Water Law as Implemented in the Lake Okeechobee Service Area

**August 12, 2010
Governing Board Meeting**

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Series of Presentations

- **August:**

- **Overall Framework of Florida Water Law as Implemented in the Lake Okeechobee Service Area**

- **September:**

- **Water Resource Protection Tools**

- **September / October:**

- **Adaptive Protocols Document**



Purpose of Today's Presentation

- **Address question presented at July Governing Board:**

Should the District reduce existing consumptive use withdrawals through permit modifications or water shortage restrictions in order to improve environmental conditions in the Lake, Caloosahatchee Estuary, St. Lucie Estuary, STAs, and/or WCAs ?



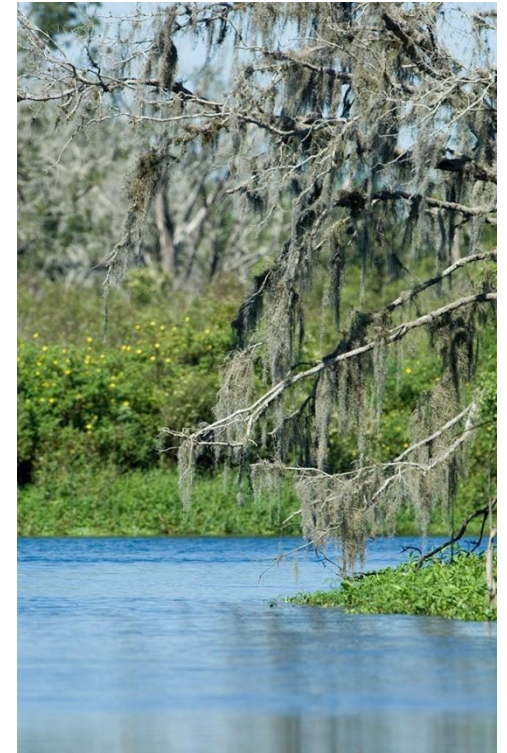
Overall Legislative Policy

- **Manage water resources to ensure sustainability**
- **Various statutes establish the need to:**
 - **Protect and/or enhance the natural resource**
 - **Allow for development of water supply**
- **Numerous statutory authorizations or “tools” to manage water in varying conditions to achieve sustainability**



Presentation Overview

- **Permitted water rights:**
 - **A matter of “certainty”**
- **Integration of level of certainty into comprehensive framework:**
 - **Environment**
 - **Consumptive Use**
- **Considerations of Law:**
 - **Statutes and Rules**



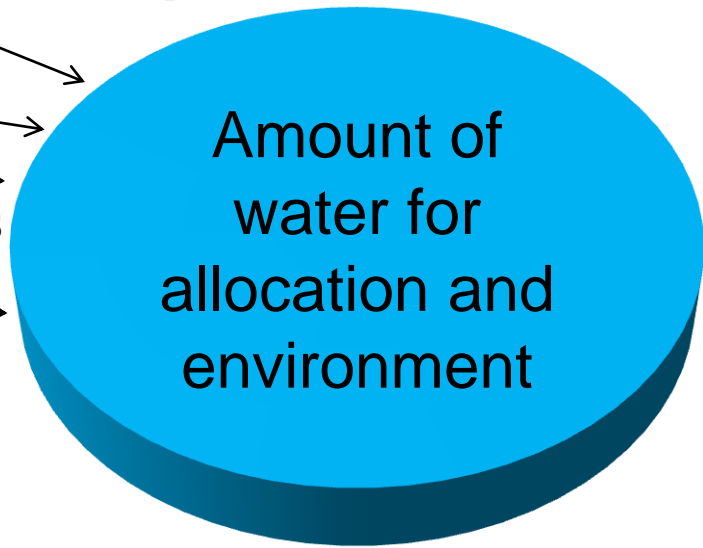
Certainty Concept

- **As a means of addressing sustainability, Florida water law was developed based on:**
 - **Blending of East and Western water law concepts**
 - **No property right, but permit with “certainty”**
 - **Florida law balances human and environmental interests**
- **A Model Water Code**
 - **3 areas of certainty “heart of” water supply regulations**
 - **Physical**
 - **Legal**
 - **Tenure**



Physical Certainty – “Determining the Size of the Pie”

- **Factors that determine amount of water available to allocate for consumptive use and provide to natural system**
 - **Hydrologic factors (rainfall, dry/wet, etc)**
 - **Environmental needs**
 - **Storage**
 - **Lake Okeechobee, WCA, Reservoirs**
 - **Other human interest factors:**
 - **Flood Protection**
 - **Recreation / Navigation**

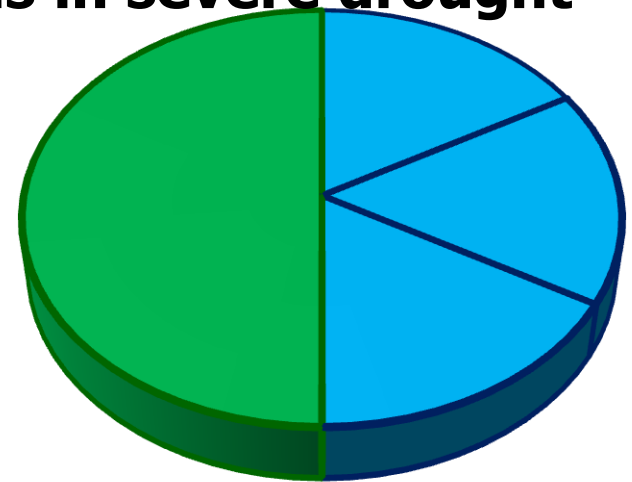


Amount of
water for
allocation and
environment



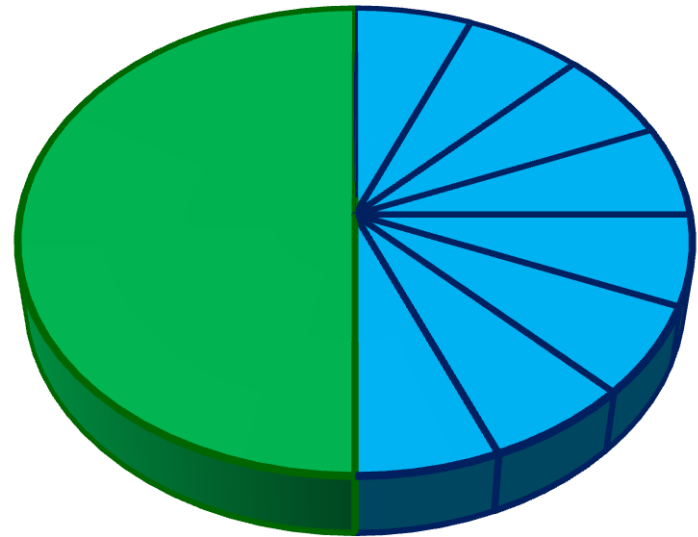
Physical Certainty – The Amount of the Allocation – “Slicing the Pie”

- **Permit allocations supplement rainfall**
- **High level of certainty (“Big Slices”)**
 - **Large allocation to meet demands in severe drought (e.g. 1 in 50)**
 - **No harm to environment**
 - **Fewer allocations**
 - **Low risk of water shortage cutbacks**
 - **Lower risk of the environment having to compete with users – only in severe drought**



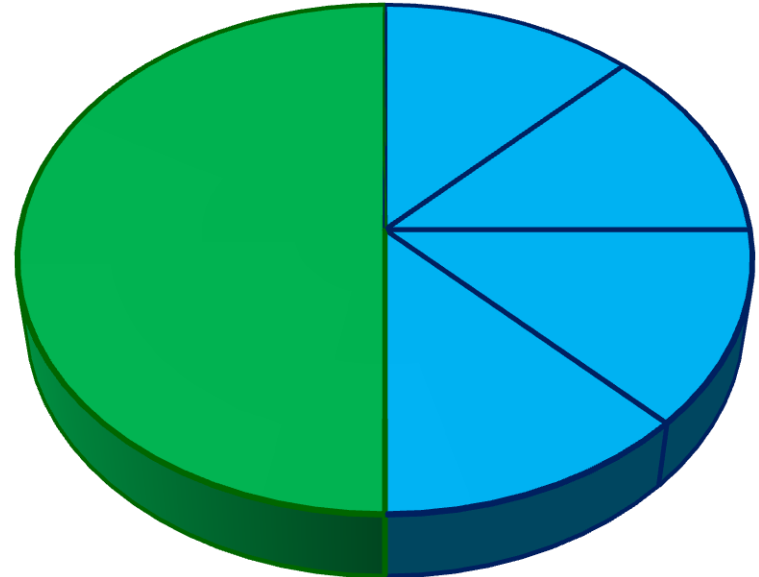
Physical Certainty – The Amount of the Allocation – “Slicing the Pie”

- **Low level of certainty for users (“Small Slices”)**
 - **Small allocation to meet demands in minor drought (e.g. 1 in 3)**
 - **No harm to environment**
 - **Many allocations**
 - **High risk of water shortage cutbacks**
 - **Frequent competition between environment and users when minor drought**



Physical Certainty – The Amount of the Allocation – “Just the Right Size Slice”

- **1 in 10 Level of Physical Certainty**
 - Legislative Direction (Section 373.705, F.S.)
 - Balancing: reasonable allocation, no harm to environment, infrequent competition in drought
- **District Implementation**
 - Implemented in regional water supply plans
 - CUP rules (1 in 10)
 - Linked to:
 - Water Shortage
 - MFL's
 - Projects to develop



Legal Certainty – “Protecting the Slice”

- **Permitted users’ water right is protected from being impacted by actions of “others”**
 - **Variety of statutory assurances that permits, for their duration, will not be modified or reduced, except in limited circumstances**
 - **“Others” - neighboring users, the State or District**
- **Distinguished from influences on water availability that occur as a result of federal decisions governing the C & SF Project (e.g. LORS 2008, Endangered Species Act, etc.)**



Tenure Certainty – “How Long the Slice Lasts”

- **Establishes the duration for which the permitted rights are protected**
- **Users favor long term duration due to capital investments**
- **Legislature’s direction:**
 - **Generally - 20 years, if conditions of permit issuance are met for duration**
 - **Extraordinary contribution of land or funding enabling alternative water supply development – 50 years**
 - **Renewable energy generating facility – 25 years**



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Regional Water Supply Planning

- **Legislative Intent** (ss. 373.016 and 0831, F.S.)
 - Sufficient water be available for all existing and future reasonable-beneficial uses and the natural system
 - Avoid competition for water supply
- **Statutory Direction on Plan Formulation:**
 - Required when sources not adequate to supply water for existing and future uses and sustain natural systems
 - 20-year planning horizon
 - Planning conducted in public process
 - Required contents
 - Section 373.0361, F.S.



2000 Regional Water Supply Planning Process

- **Integrated set of performance measures to evaluate supply and demand simultaneously**
- **Achieved 1 in 10 Level of Certainty**
 - **Demands: environmental and user demands projected through 2020**
 - **Supplies: existing conditions and operation of C & SF Project, plus new projects**
 - **CERP and alternative water supply projects**
 - **Lake Okeechobee regulation schedule**
 - **Water shortage triggers for Lake users included**

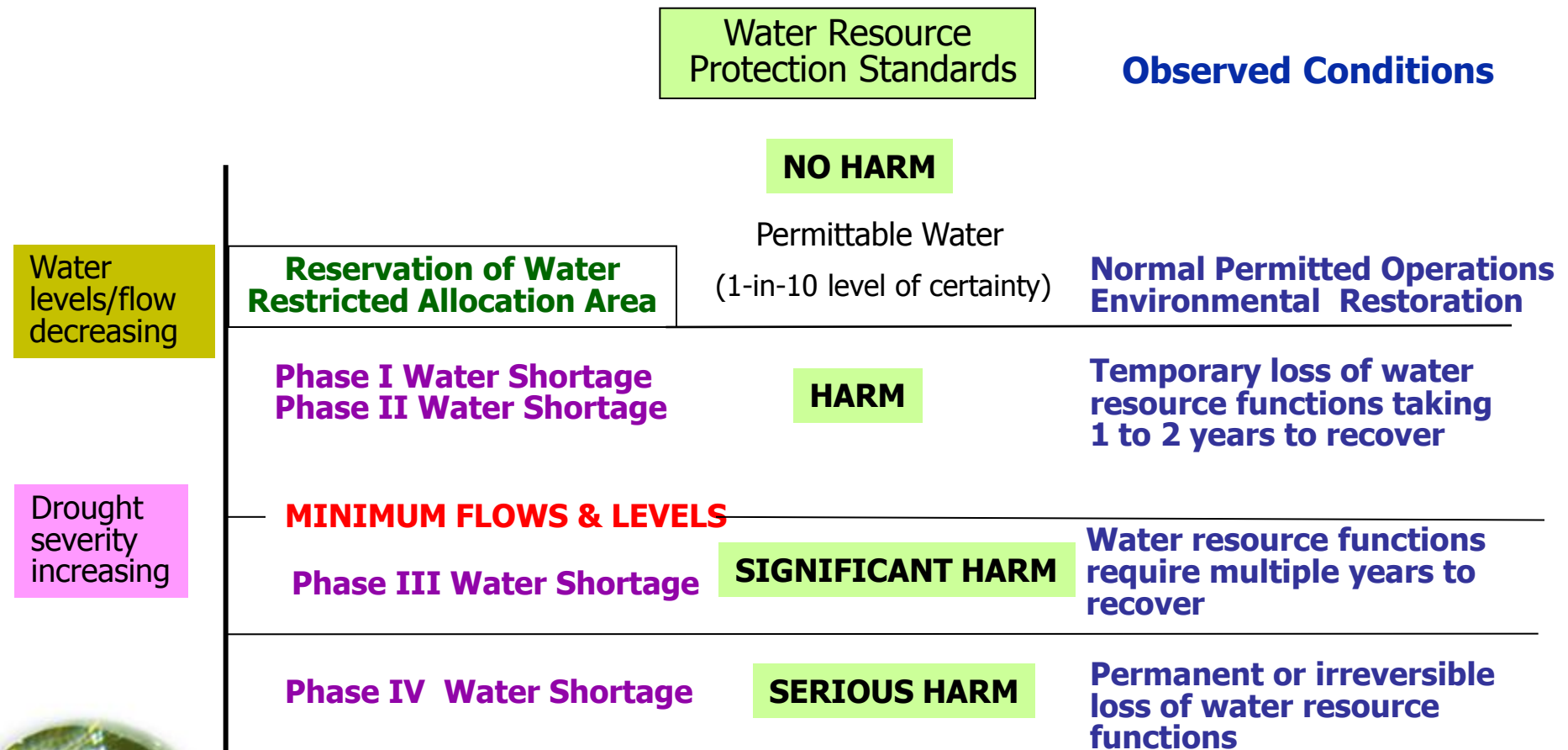


Implementation of the 2000 Regional Water Supply Plans

- **Adopted rules to implement plan based on performance measures**
 - **Consumptive use permit rules**
 - 1 in 10 allocations
 - Wetlands, salt water intrusion, Reservation, and regional water availability rule
- **Water shortage trigger rules**
- **MFLs and recovery plans**

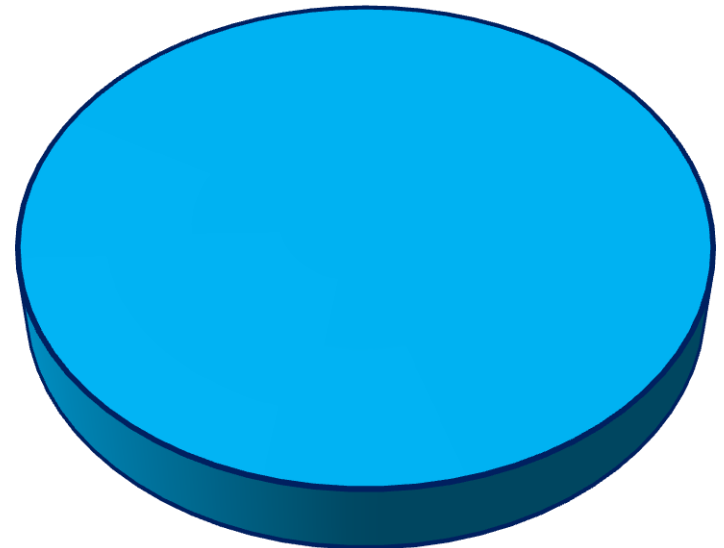
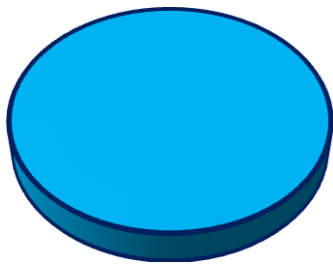


Conceptual Relationship Among the Water Resource Protection Standards



Plan to “Make Pie Bigger”

- **New Projects – “Make Pie Bigger” for both environment and users**
 - **Alternative water supply projects**
 - **CERP Projects**



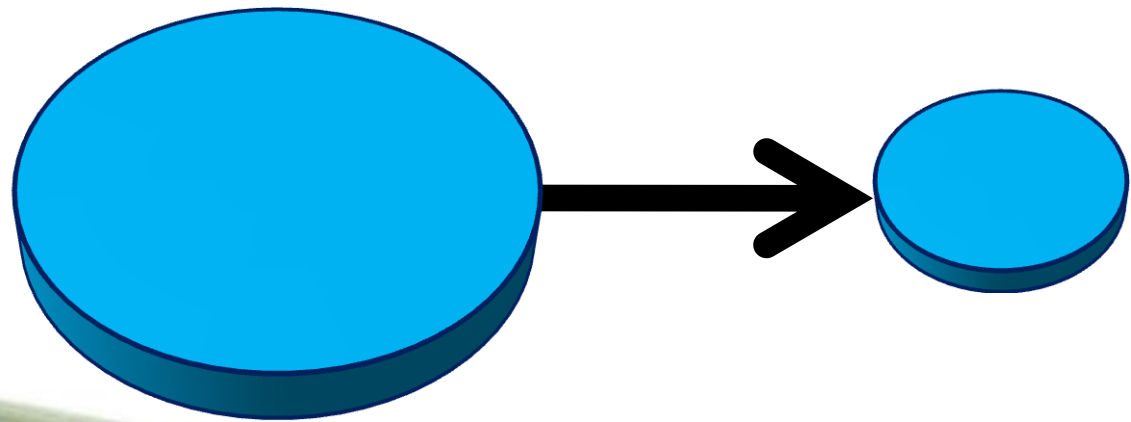
Intervening Events

- **CERP schedules delayed from those in Plan**
 - **Federal funding**
- **LORS 2008 – Federal Action reduces Lake storage**
 - **Lake Okeechobee MFL projected to experience significant harm**
- **Consumptive use permit rules “cap” Lake uses**
 - **Permits renewed for 20 year duration**

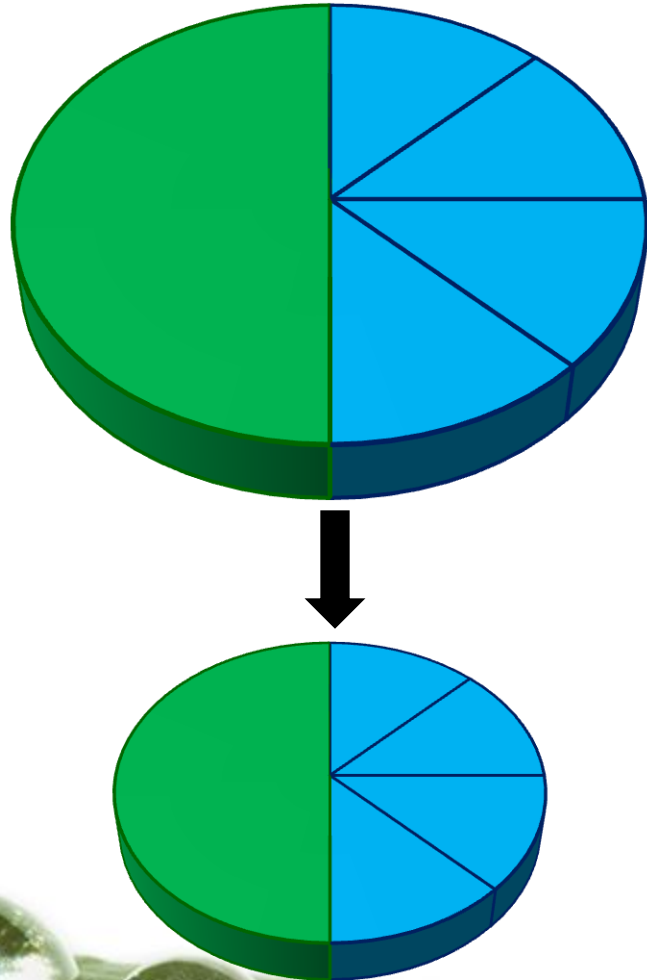


Intervening event: LORS 2008 and Physical Level of Certainty

- 2000 Plan identified need for “bigger pie”
- LORS 2008 shrinks the size of water supply pie
- Less physical certainty for environment and users
 - 1 in 10 to 1 in 6 level of certainty



Intervening event: LORS 2008 and Physical Level of Certainty, cont.



Risk Increases:

- **MFL Violations**
 - Lake
- **Water Shortage Restrictions**
- **Water deliveries to south**
 - STAs
 - WCAs

***Flows to Caloosahatchee River Estuary improved**



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- **Permitted water rights:**
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 - Environment with Consumptive Use
- **Considerations of Law:**
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Minimum Flows and Levels - **Statutes**

- **Minimum Flows and Levels** identifies the point at which further withdrawals will cause "significant harm" to the water resources or ecology of an area (s. 373.042 and 373.0421, F.S.)
- **Recovery strategy required**
- **Caloosahatchee, Lake Okeechobee, WCA's, and Everglades National Park**



Minimum Flows and Levels – **Statutes**, cont.

- Existing legal uses addressed:
- **“The recovery ... strategy shall include ... a timetable which will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including development of additional water supplies and implementation of conservation ... concurrent with, to the extent practical, and to offset, reductions in permitted withdrawals, consistent with the provisions of this chapter.”**(s. 373.0421(2), F.S.)



Minimum Flows and Levels – Rules

- **MFL Rules state MFL criteria and explain overall program implementation as Board has directed, to date**
- **Overall Direction:**
 - **Recovery plans will be implemented in phases with consideration to other District missions (40E-8.421(1)(a), F.A.C.)**
 - **MFL recovery for Everglades, Lake Okeechobee, and Caloosahatchee River will not be achieved immediately due to the lack of regional water storage (40E-8.421(2)(b), F.A.C.)**
 - **Adopted as a single, comprehensive package: MFL, Consumptive Use, and Water Shortage rules (40E-8-011(4), F.A.C.)**



Minimum Flows and Levels – **Rules**, cont.

Water Shortage Implementation:

- MFL based water shortage restrictions imposed only if climatic conditions more severe than 1 in 10 drought and to the extent users contribute to the exceedance (40E-8.441(1), F.A.C.)
- Water shortage restrictions will not be used in place of a recovery plan component to address MFL exceedance (40E-8.441(2), F.A.C.)



Minimum Flows and Levels – **Rules**, cont.

Impact on Consumptive Use Permittees:

Permits will not be modified or revoked prior to expiration based on MFL impact, unless District determines use can be served by another concurrently available source.

(40E-8.431, F.A.C.)



Additional Statutory Direction

When the Governing Board adopts rules or issues orders, it “...shall act with a view to full protection of the existing rights to water in this state insofar as consistent with the purpose of this law.” (s. 373.171(2), F.S.)



Additional Statutory Direction, cont.

“No rule or order shall require modification of existing use or disposition of water in the district unless it is shown that the use or disposition proposed to be modified is detrimental to other water users or to the water resources of the state.” (s. 373.171(3), F.S.)

- **Possible to impact rights, if burden met**
- **Must address requirement for additional supply sources**



Additional Statutory Direction, cont.

“The governing board ... may revoke a permit as follows: ...

(3) For violation of any provision of this chapter, the governing board or department may revoke the permit, in whole or in part, for a period not to exceed 1 year.” (s. 373.243, F.S.)

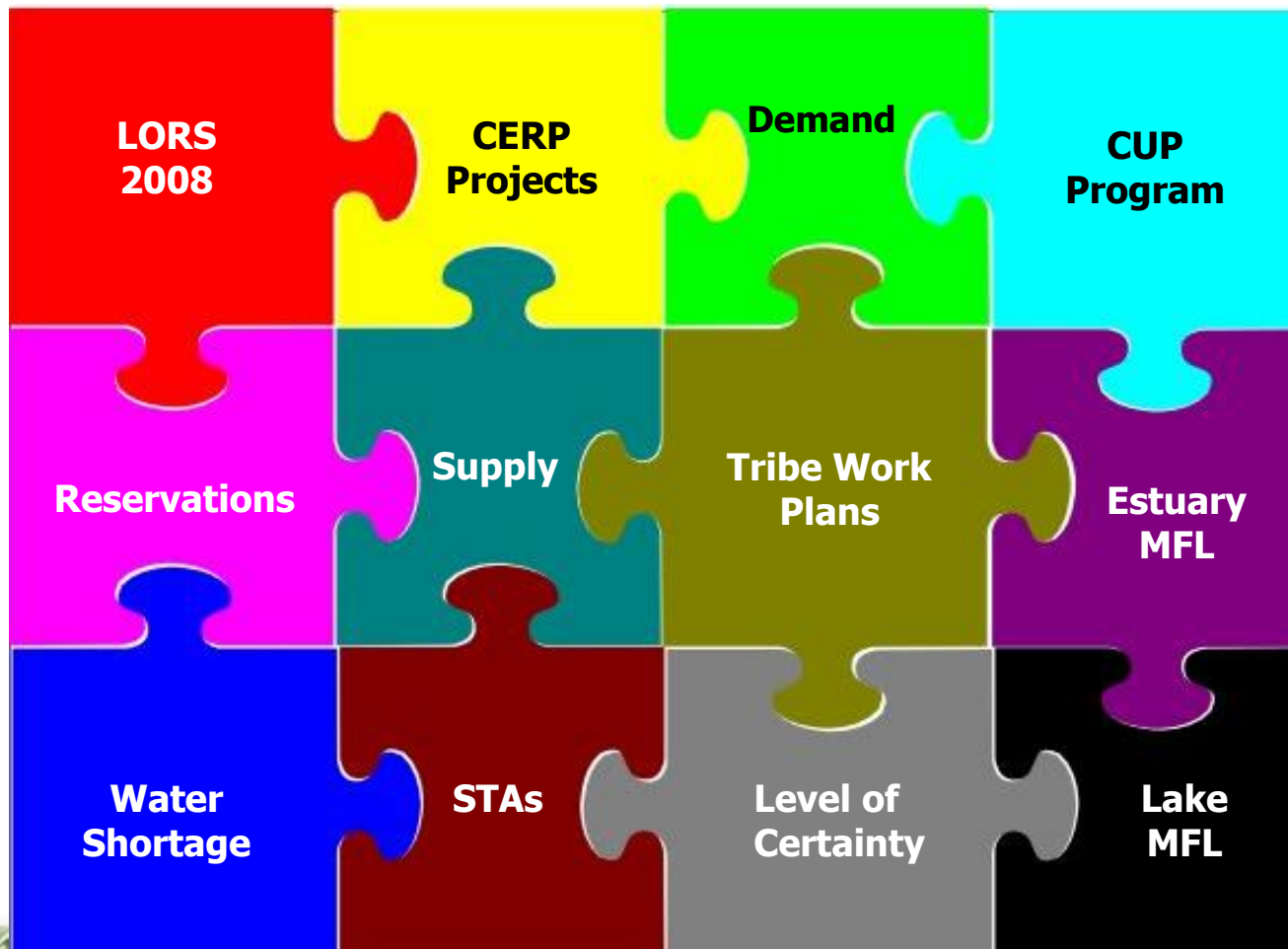


Recap of Presentation

- **Certainty is essential to environment and users**
- **Cohesive, integrated framework based in statute and existing rules**
- **Changes experienced were due to**
 - **Federal regulation schedule change**
 - **Delay of the MFL recovery plan / CERP projects**

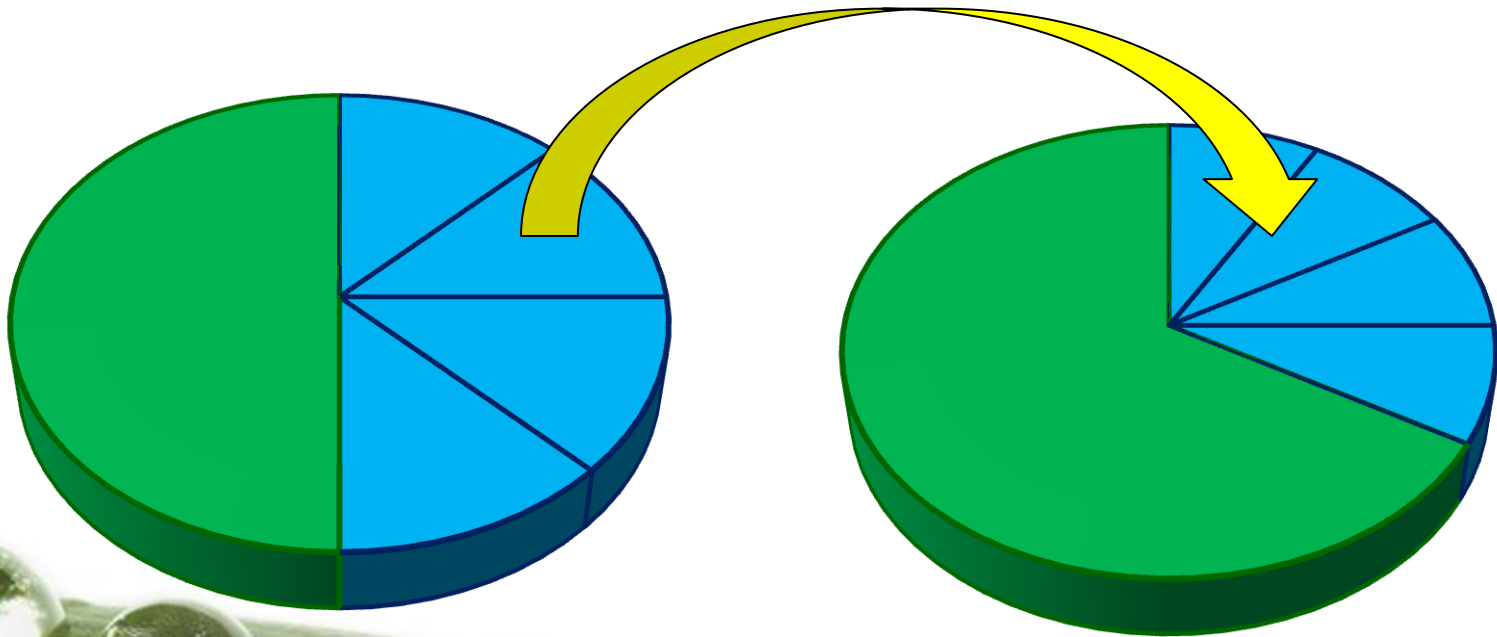


Altering implementation framework will impact all topics



Policy Consideration

Should the District reduce existing consumptive use withdrawals through permit modifications or water shortage restrictions in order to improve environmental conditions in the Lake, Caloosahatchee Estuary, St. Lucie Estuary, STAs, and/or WCAs ?



Upcoming Presentations

- **September: Water resource protection tools**
 - **Minimum flows and levels**
 - **Reservations**
 - **Restricted allocation areas**
 - **CERP Assurances**
- **September / October:**
 - **Adaptive Protocols Document**



Discussion